Supreme Court, U.S.
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NO. 03-551

In The Supreme Court of the United States

DAVID YOUNG,
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

On Petition for a Writ of Certiorari
To the Supreme Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Should this Court decline jurisdiction where the police acted reasonably in entering petitioner's home to execute a warrant to search for drugs after loudly and repeatedly knocking and announcing their presence and waiting at least 30 seconds without a response?

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COUNTER-STATEMENT OF THE CASE

Petitioner, a major distributor of crack cocaine in Philadelphia, was charged with possessing a controlled substance with intent to deliver, knowingly or intentionally possessing a controlled substance, and criminal conspiracy. Prior to trial, he moved to suppress physical evidence of those crimes obtained in a search of his residence, including wholesale quantities of cocaine and marijuana. The Court of Common Pleas of Philadelphia County denied the motion and, following a subsequent non-jury trial, convicted petitioner of the above crimes. The Superior Court of Pennsylvania affirmed in an unpublished decision. The Supreme Court of Pennsylvania declined jurisdiction.

From October 1998 through March 1999, narcotics officers from the Philadelphia Police Department conducted an extensive investigation of a drug trafficking operation conducted from several Philadelphia properties, including petitioner's residence at 6546 N. 16th Street. At the conclusion of the investigation, which uncovered evidence that petitioner was a supplier of crack cocaine to several street-level drug dealers, the officers obtained a search warrant for petitioner's residence (N.T. 8/21/00, 63-64, 113).

On March 26, 1999, the officers executed the warrant. At 6:00 a.m., they knocked several times on the front door to petitioner's residence and announced in loud voices, "Police, search warrant" (id. at 114). The officers waited 7 to 10 seconds without receiving a response (id. at 115). Several officers then resumed knocking on the front door and loudly calling out, "[P]olice[,] warrant" (id. at 115, 119-20). Thereafter, they waited 15 to 20 more seconds without receiving a response (id. at 120). After the substantial interval encompassed by the repeated knocks and announcements, as well as the 22 to 32 seconds after the

announcements, one of the officers hit the doorknob once with her ram, forcing it to swing open (id. at 115).[1]

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[1] Petitioner initially contends that the officers waited a total of 22 to 30 seconds before entering his residence (Pet., 12), and later asserts that they waited as little as 20 seconds (id. at 16). Petitioner's claim that the officers waited 22 to 30 seconds fails to take into account the period of time that it took for the officers to engage in the repeated knocks and announcements; his later claim that they might have waited an even shorter period is necessarily false as well. As Sergeant Steven Powell testified at the suppression hearing, the estimate relied upon by petitioner encompasses only the time in which the officers were quiet:

> Q Then what do you do, do you wait another seven to ten seconds?
>
> A Well, actually, then you wait a little longer. At that point, Mr. Stein, you'd knock and announce. There would be -- Your Honor, if I may, you would knock (indicating), three hard knocks, three or four hard knocks on the door, and then shout loudly, police, search warrant, police, search warrant, police, search warrant, but actually a lot louder than that, and then you wait and you listen ....
>
> Q Between the knock and announce, the initial one, and the second knock and announce, is about seven to ten seconds, right?
>
> A Seven to ten seconds *of quiet*. The officers then stay quiet and listen for a response.
>
> Q Then there's a second knock and announce?

(continued...

From petitioner's residence, the officers recovered a cloth bag containing 125 grams of cocaine in bulk form, two baggies containing a total of 23 grams of crack cocaine, baggies containing bulk and packaged marijuana, drug packaging materials, several loaded guns, and a bullet proof vest (N.T. 1/9/01, 221-29; 1/10/01, 7-14, 28-29, 37).

On September 9, 2000, the Honorable Anthony J. Defino denied petitioner's motion to suppress the evidence recovered from his residence. On January 11, 2001, Judge Defino, sitting without a jury, found petitioner guilty of the above crimes. On May 15, 2001, Judge Defino sentenced petitioner to seven to fourteen years of imprisonment.

A Then there's a second knock and announce.

(N.T. 8/21/00, 119; emphasis added). Of course, in order to assess whether there was time for an exigency to develop during the pre-entry period, it is not merely the time in which the officers were quiet that must be considered; the time in which they were actually knocking on petitioner's door and announcing their intent to execute the warrant was also time in which evidence was potentially being destroyed. It must necessarily have taken the officers at least a few seconds to make "three or four hard knocks on the door" and then repeatedly shout their intention to execute the warrant. Thus, when the time spent physically making the two series of knocks and announcements is added to the combined 22 to 30 seconds of silent waiting that ensued, it is clear that no less than -- and very likely more than -- 30 seconds passed between the initial knock and announcement and entry into petitioner's residence.

The Superior Court affirmed the judgments of sentence in an unpublished memorandum opinion on December 13, 2002 (Pet. App., B1). The Supreme Court of Pennsylvania denied petitioner's request for allowance of appeal on July 10, 2003 (id. at A1).

REASONS FOR DENYING THE PETITION

THE OFFICERS ACTED REASONABLY IN ENTERING PETITIONER'S RESIDENCE TO EXECUTE A WARRANT TO SEARCH FOR DRUGS AFTER LOUNDLY AND REPEATEDLY KNOCKING AND ANNOUNCING THEIR PRESENCE AND WAITING AT LEAST 30 SECONDS WITHOUT A RESPONSE.

Although the underlying decision of the state appeals court is an unpublished memorandum opinion that will have no effect beyond the present case, petitioner asks this Court to accept jurisdiction to review his claim that the officers acted in an unreasonable manner -- in violation of the Fourth Amendment as applied to Pennsylvania by operation of the Fourteenth Amendment -- when they forced open the door to his residence and entered to execute the search warrant.[2] This Court should decline to do so. Thirty seconds was a reasonable amount of time for the officers to wait in a drug case after loudly and repeatedly knocking and announcing their presence, and receiving no response. Indeed, this period, which is the minimum amount of time that the officers waited, was approximately twice the waiting period recently approved under similar circumstances by this Court.

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[2] Pursuant to Superior Court Internal Operating Procedure 65.37(A), "An unpublished memorandum decision shall not be relied upon or cited by a Court or a party in any other action or proceeding, except...(1) when it is relevant under the doctrine of law of the case, res judicata, or collateral estoppel, and (2) when the memorandum is relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding."

The "general touchstone of reasonableness ... governs the execution of the warrant." United States v. Ramirez, 533 U.S. 65, 71 (1998). Police officers with a warrant may enter without permission when they have a reasonable suspicion that further delay "would be dangerous or futile, or ... would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." Richards v. Wisconsin, 520 U.S. 359, 394 (1997).

Sub judice, the officers had a reasonable suspicion that further delay in executing the warrant would inhibit their investigation by allowing petitioner to dispose of his drugs. The officers went to petitioner's residence to execute a valid search warrant. Shortly after they arrived, they knocked several times on the front door and announced in loud voices, "Police, search warrant" (N.T. 8/21/00, 114). At that point, petitioner was on notice that the discovery of his drugs was imminent, and that one of his few chances of escaping the consequences of his drug trafficking was to quickly dispose of the evidence.

After taking the time to give petitioner such notice, the officers waited another 7 to 10 seconds without receiving a response (id. at 115). Given the easily disposable nature of drugs, it would have been reasonable for the officers to enter petitioner's residence at that point. See United States v. Jones, 133 F.3d 358, 361-362 (5th Cir. 1998) (noting that courts have generally deemed the suspicion of exigent circumstances reasonable "when officers have waited more than 5 seconds," and holding, "In drug cases, where drug traffickers may so easily and quickly destroy the evidence of their illegal enterprise by simply flushing it down the drain, 15 to 20 seconds is certainly long enough for officers to wait before assuming the worst and making a forced entry") (cited

with approval in United States v. Banks, 124 S.Ct. 521, 526 n.5 (2003)).

Nevertheless, the officers delayed entry even further. Several officers resumed knocking on the front door and loudly calling out, "[P]olice[,] warrant" (N.T. 8/20/00, 115, 119-20). Thereafter, they waited 15 to 20 more seconds without receiving a response (id. at 120). Only after failing to receive a response after this substantial interval of at least 30 seconds did one of the officers force the door open (id. at 115).

This Court's recent decision in Banks demonstrates that it was quite reasonable for the officers to suspect that further delay would allow the destruction of petitioner's drugs. In that case, several law enforcement officers seeking to execute a warrant to search for drugs knocked loudly on the front door to Banks' residence and called out "police search warrant." Banks, 124 S.Ct. at 523. After waiting for 15 to 20 seconds without a response, the officers forced their way into the residence to conduct the search. Id.

Banks, like petitioner, contended that the officers' waiting period was not long enough to create a reasonable suspicion of exigent circumstances.[3] This Court, however, reached the contrary conclusion, holding: "After 15 or 20 seconds without a response, police could fairly suspect that cocaine would be gone if they were reticent any longer." Id. at 526. "[W]hat matters," this Court explained, "is the opportunity to get rid of cocaine, which a prudent dealer will keep near a commode or the kitchen sink .... 15 to 20 seconds does not seem an unrealistic guess about the time

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[3] In fact, petitioner relies heavily on the erroneous decision of the Ninth Circuit reversed by this Court in Banks (Pet., 25-27).

someone would need to get in a position to rid his quarters of cocaine." Id. at 527.

The same is true here. Given this Court's determination that 15 to 20 seconds is a reasonable approximation of the time someone would need to position himself to rid his quarters of cocaine, it is manifest that, as the state appeals court determined, the officers' fear that petitioner would be in such a position after the 30 seconds or more by which they delayed entry in this case was also reasonable. The determination by the state appeals court -- that the officers' conduct was reasonable under the totality of the circumstances -- was plainly correct in light of this Court's subsequent decision in Banks. Consequently, neither a remand for re-consideration in light of Banks nor any other relief would be appropriate.

There are no factual dissimilarities between the present case and Banks that would warrant a different conclusion. The residence in Banks was a two-bedroom apartment whereas the residence here was a house. As this Court explained in Banks, however, the relevant period is the time necessary for an occupant to dispose of his drugs, not the time necessary to admit the officers knocking at the door. Id. Thus, there is "no reliable basis for giving the proprietor of a mansion a longer wait than the resident of a bungalow, or an apartment like Banks's." Id.

In addition, the warrant in Banks was executed at 2:00 p.m. whereas the warrant here was executed at 6:00 a.m. This, too, is inconsequential. As this Court recognized, a prudent drug dealer will be ready to dispose of the evidence of his illegal conduct at a moment's notice. Id. This means that he will keep his drugs "near a commode or the kitchen sink" in order to save time destroying evidence. Id. It must also mean that he will be ready to dispose of his drugs at any

time of day. It does a drug dealer no good to position his wares for their swift destruction if he is to be dead to the world when authorities arrive. Thus, a prudent drug dealer will keep himself or a confederate in a position to hear arriving police and dispose of the drugs, and will be just as capable of exploiting a 15 to 20 second delay to position himself to destroy his drugs early in the morning as he is the rest of the day. See United States v. Spriggs, 996 F.2d 320, 322-23 (D.C. Cir. 1993) (holding a 15-second wait at 7:45 a.m. on a weekday reasonable where suspect was found to have been in his bedroom) (cited with approval in Banks, 124 S.Ct. at 526 n.5). But again, the officers here waited approximately twice the 15 to 20 second period in Banks. In fact, they waited 15 to 20 seconds after their second series of knocks and announcements alone. The cautious approach taken by the officers sub judice was in no sense unreasonable.[4]

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[4] In light of Banks, Griffin v. United States, 618 A.2d 114 (D.C. 1992), a case relied upon by petitioner in which a divided panel of the District of Columbia Superior Court held a 30- inadequate to permit a reasonable suspicion that police had been refused admittance, is not viable authority when police claim an exigent need to enter.

United State v. Gallegos, 314 F.3d 456 (10th Cir. 2002), another case relied upon by petitioner, also involved an alleged refusal to admit and is not viable authority when exigent circumstances are at issue. 314 F.3d at 460. Moreover, the delay in that case -- 5 to 10 seconds -- is just a fraction of the delay at issue here. Id.

The only other cases cited by petitioner in which the officers' entry was deemed unreasonable involved negligible delays, and thus merit no serious discussion. See United States v. Dice, 200 F.2d 978 (6th Cir. 2000) (officers waited "a few"

(continued...

As the state court found, the officers possessed a reasonable suspicion of exigent circumstances when they entered petitioner's residence to execute the warrant. There is no compelling reason for this Court to accept jurisdiction of this case.[5]

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seconds before entry); State v. Monay, 943 P.2d 908, 909 (Haw. 1997) (2-second delay); State v. Herrick, 567 N.W.2d 336, 339 (N.D. 1997) (3-second delay).

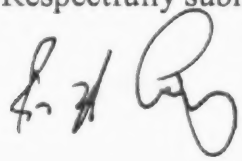
Petitioner does cite to another case from the District of Columbia Superior Court -- Poole v. United States, 630 A.2d 1109 (D.C. App. 1993). He fails to note, however, that the court found that the forced entry in that case after a mere 10-second delay was justified by exigent circumstances. Id. at 1114, 1122. Likewise in each of the remaining cases cited by petitioner, the entry by police into the suspect's home was deemed reasonable.

[5] In any event, the evidence would inevitably have been discovered because the officers had a valid warrant that allowed them to search petitioner's residence, and that search would have taken place regardless of whether the officers waited thirty seconds, one minute, or any other period of time required before entry. Thus, even if the officers had acted unreasonably -- they plainly did not -- no justification for suppression would have been present. See Segura v. United States, 468 U.S. 796, 814 (1984) (rejecting suppression based on allegedly illegal entry; "Had police never entered the apartment, but instead conducted a perimeter stakeout to prevent anyone from entering the apartment and destroying evidence, the contraband now challenged would have been discovered and seized precisely as it was here"); Ker v. California, 374 U.S. 23, 39 (1963) (plurality) ("Suspects have no constitutional right to destroy or dispose of evidence, and no basic constitutional guarantees are violated because an officer succeeds in getting to a place where he is entitled to be more quickly than he would, had he complied with [the relevant legal requirement]") (citation omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,



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